

**Washington Borough
Board of Adjustment Minutes
October 25, 2005**

Chairman Eller declared that a quorum was present to conduct the meeting in accordance with the 'Open Public Meetings Act'.

Roll Call: Semonche, Post, Mangiacotti, Nienstedt, Eller, Hurley and Cioni – Present. 7.

Absent: Kramer and Schlader – Absent 2.

Also Present: Stuart Ours, Esq., Board Attorney
Robert Miller, C.M.E., Borough Engineer
Linda L. Hendershot, Clerk

Chairman Eller led everyone in the flag salute.

MINUTES:

Regular Meeting – September 27, 2005

Chairman Eller entertained additions or corrections to the minutes of the regular meeting held September 27, 2005.

Hearing none, it was moved by Hurley, seconded by Nienstedt that the minutes of the regular meeting held September 27, 2005 be approved as presented.

Roll Call: Cioni, Mangiacotti, Eller, Hurley and Nienstedt – Ayes: 5,
Nays: 0. Abstained: Post and Semonche.

Motion carried.

RESOLUTIONS:

Case #2005:16 – Mr. & Mrs. Clint Leming, 52 Willow St.

It was moved by Hurley, seconded by Cioni that the resolution approved at the September meeting be adopted granting permission to Mr. and Mrs. Leming to construct a porch and second floor to their home.

Roll Call: Cioni, Mangiacotti, Nienstedt, Hurley and Eller – Ayes: 5,
Nays: 0, Abstained: Post and Semonche.

Motion carried.

Case #2005:17 – Steve Alpaugh, 4 McKinley Avenue

It was moved by Nienstedt, seconded by Mangiacotti that the resolution approved at the September meeting be adopted granting permission to Steve Alpaugh to construct a deck on his property and replace an existing shed.

OLD BUSINESS:

Case #2005:3, J.H. Van Cleef, Rt. 31, North, Blk. 37, Lots 4-6 (Represented by Alan Lowcher, Esq.

This application is filed for the purpose of applying for a Use Variance for the construction of a 55 + over age/restricted housing development. The parcel is located in the Industrial Zone.

In the Zoning Officer's Refusal of Permit this request is denied for noncompliance with the provisions in Section(s) 94-83A of the Municipal Zoning Ordinance for the following Reasons: Dwelling units are not a permitted use in the Zone.

This case was continued from the September meeting for further testimony from their professionals and additional information requested by the Board.

Additional documents were enclosed in this agenda.

Attorney Lowcher indicated that additional testimony would be given from the professionals that were not heard at the Board's previous meeting and additional information will be entered into the record that the Board had previously requested.

Robert Ehlenburger, Geologist was administered the oath by Attorney Ours. Mr. Ehlenburger gave a brief history of his education and experience in the field of environmental issues. An environmental assessment of the site was done. Two exhibits were entered into the record, A-12 which was an aerial view of the site and the environmental report – AMEC known as A-13.

A letter from the NJ DEP releasing them from all liability with no restrictions for the development of the land for age restricted housing was entered into the record as Exhibit A-14.

There was no audience testimony or questions of this applicant.

Douglas Polyniak, Traffic Engineer was administered the oath by Attorney Ours.

Mr. Polyniak gave a brief history of his education and experience in the field of traffic engineering.

M. Polyniak described the 9.3 acre parcel and submitted a traffic generated document dated 9-23-05. The report finds no negative traffic consequence. There is less traffic generated with this type of use. Usually seniors will avoid peak hours and the average number of cars dispersed over the day would be approximately 77 cars.

Chairman Eller was concerned with one entrance for this particular use. He also pointed out that American Can is adjacent to this parcel which generates a lot of traffic.

Engineer Miller asked if there was any analysis of the turning movement and safety issues. This analysis needs to be done as it is an important aspect of the application. This information will be supplied during the site plan process.

There was no audience testimony or questions of the engineer.

John Chadwick, Planner was administered the oath by Attorney Ours. Mr. Chadwick gave a brief history on his education and experience in the field of planning.

Mr. Chadwick noted that project is an inherently beneficial use for the community. The project, as proposed, will provide housing for the more advanced age of your senior population based on its design. The developer will also be contributing the sum of \$500,000.00 to satisfy the requirement of COAH towards new housing or rehabilitation. This funding can be used to take an area in need of rehabilitation and improve the Borough's housing stock. The impact of this project will affect the Borough's emergency services and the developer will contribute \$ 500,000.00 towards this area as well. It is definitely a use that is needed in the municipality. Also, generally this type of use generates less traffic. The Use Variance can be contingent upon the approval of the site plan. The only other variance that would be required would be a bulk variance for the number of stories of the building itself.

Parking was addressed and 1.54 parking spaces, per unit, is being proposed. This is more than adequate since senior housing generates less parking spaces.

There was no audience testimony or questions for the engineer.

Frank Tomaino distributed a revised floor plan dated 10-24-05 noted as Exhibit A-16. This addressed the concerns of the second room being classified as a second bedroom. The door was eliminated and the closet making it evident that it would not be a second bedroom.

Michael Petry, Engineer also gave additional information and submitted into evidence Exhibit A-17 which indicated that sidewalks would be done all the way down Rt. 31 to connect to the existing sidewalks.

Board member Cioni also noted the developer was open to further discussion with the outside façade of the building during the site plan process.

The Board took a short recess at 8:20 PM and reconvened at 8:30 PM with everyone present.

The sewer usage was clarified that they projected that 21,000 versus the 28,000 would be the usage figure.

Chairman Eller opened up the public portion of the hearing to the audience for their questions or comments.

Jim Sheldon, Executive Director of B.I.D was administered the oath by Attorney Ours.

Mr. Sheldon testified that he has been working very closely with the Office of Smart Growth and the businesses to help them increase their property values. He urged the Board to consider approving this use variance. This proposed use is very beneficial to the growth of the Borough and would have the least impact on services.

There were no questions or comments from the audience.

Attorney Lowcher gave a summary of the testimony on behalf of this client's request .

The granting of this use variance would take a twenty years old eyesore and make something that would benefit of the community, it would address the Borough's affordable housing needs, no added burden on the services the Borough provides, it will be providing senior citizen housing to those who choose to stay in the community and it will not affect the public health, safety and welfare of the community. It will be a efficient use of the land versus an industrial site which would generate much more traffic, it supports the Highlands Regional Plan, the proposed change in use would not require a change to the Borough's Master Plan. There are more positives than negatives. The only real actual negative aspect is from a safety stand point. This issue will be actively addressed during the site plan process. There will more in depth studies done and they will be working with the New Jersey Department of Transportation. In view of all the testimony Attorney Lowcher asked the Board to consider the approval of a Use Variance, subject to major site plan approval and a bulk variance for the increase for a four story building versus a three story for the Industrial Zone.

There is no detriment to the public good, nor no real significant detriment to the Zone Plan.

Senior Housing is inherently a very beneficial use to the community.

It was entered into the record that Board member, Charles Post did listen to the tape of the initial proceedings and can take an active part in the discussion and motion to consider this application.

Attorney Ours reviewed the criteria necessary for the granting of this Use Variance and Bulk Variance for exceeding the height requirements. He outlined some of the special reasons that do exist for considering the approval of this Use Variance. Senior Housing is in fact a very beneficial use to a community. One of the purposes of zoning is to provide for senior citizen housing. It would also be taking away this eyesore and develop the site to place it back on the tax rolls. The approval would be conditioned upon site plan approval, deed restrictions for senior housing guidelines, sewer treatment works approval would also be required and the traffic studies to address the turning movement on the property as well as safe access. Sidewalks would be required along Rt. 31 to connect to the existing sidewalks and the building façade is still to be determined during the site plan process.

Robert Miller, engineer questioned what standards the Board would be applying during the site plan review? He suggested utilizing the “Industrial Zone” setbacks. The question of signs was also addressed. The “Industrial Zone” setbacks would not be applied for their sign. Buffering would be addressed under Section 94-40.

Chairman Eller addressed the proposal and stated that our senior citizens helped make this community what it is today. It would be nice to know that if they chose they could continue to live in their community. The traffic and safety issues are the real concern.

It was therefore moved by Hurley, seconded by Nienstedt that the Board grant a “D” variance or use variance for the construction of 192 units of age restricted senior housing, this variance can be granted based on special reasons such as senior housing will be very beneficial to the community, the applicant is rehabilitating a parcel that is an eyesore to the community, this use will not substantially impact some of the services provided by the community such as the school system, it will not substantially impair the intent and purpose of the zone plan and it is not a detriment to the public good. These approvals are conditioned upon a major site plan approval addressing such areas the deed restrictions for an age restricted community, treatment works approval for the sewer capacity, the necessary studies addressing the traffic flow and turning movement with D.O.T. approvals if necessary, sidewalks to be constructed the length of Rt. 31 to connect to existing sidewalks, building façade to be finalized, signs and buffering.

Roll Call: Nienstedt, Hurley, Post, Mangiacotti, Cioni and Eller – Ayes: 6,
Nays: 0 – Abstained: Semonche.

Motion carried.

It was further moved by Hurley, seconded by Cioni that a bulk variance be granted to Van Cleef to allow a four story building, 45' in height.

Roll Call: Mangiacotti, Cioni, Nienstedt, Hurley, Post and Eller
Ayes: 6, Nays: 0, Abstained: Semonche.

Motion carried.

Case #2005:14 – Ruben Lopez, 56 Grand Avenue, Blk. 14.01, Lot 1

This application is filed for the purpose of enclosing an existing screen porch and expanding an existing deck. The property is located in the R-2 Zone.

In the Zoning Officer's Refusal of Permit this request is denied for noncompliance with the provisions in Section(s) 94-76 B2 of the Municipal Zoning Ordinance for the following reasons:

There shall be a front yard of not less than 30 feet. This case was carried from the August meeting agenda for improper service. Mr. Lopez was advised to re-notice the property owners and re-publish in the newspaper.

Attorney Ours reviewed the notices of service to the property owners and affidavit of publication and found all to be in order. The Board has jurisdiction to proceed with the application.

Stuart Ours administered the Oath to both Mr. & Mrs. Lopez for testimony.

Mr. Lopes testified that they would like to enclose their porch to provide for additional living space in the house. The location of the house is on the corner of Grand and W. Johnston Street and they do not have the required front yard setback. They would also like to expand their wooden deck into the front yard as well.

The Board discussed their request with Mr. & Mrs. Lopez. The size of the deck, as proposed, would also required a variance. Mr. & Mrs. Lopez agreed to downsize the size of the deck so that there would be no variance required. They would only need a variance for enclosing the porch.

Chairman Eller entertained questions or testimony from the audience. There were no remarks from the audience.

Attorney Ours reviewed the criteria necessary for the Board to consider the approval of this variance.

It was therefore moved by Mangiacotti, seconded by Cioni that the Board grant this “C” variance granting permission to enclose the existing screened in porch to give Mr. & Mrs. Lopez additional living space, this variance can be granted because it is a pre-existing non-conforming use, it will not be a detriment to the public good, nor will it substantially impair the intent and purpose of the zone plan.

Roll Call: Nienstedt, Hurley, Semonche, Post, Eller, Cioni and Mangiacotti.

Ayes: 7, Nays: 0.
Motion carried.

Case #2005:18 – Henry Riewerts, 10 Flower Avenue, Blk. 70, Lot 6
(Represented by Alan Lowcher, Esq.)

This application is filed for the purpose of continuing a pre-existing two-family residential dwelling use. This property is located in the R-1 Zone.

In the Zoning Officer’s Refusal of Permit this request is denied for noncompliance with the provisions of Section(s) 94-76A of the Municipal Zoning Ordinance for the following reasons: Permitted uses – Single-family dwellings only.

Attorney Ours reviewed the notices of service to the property owners and affidavit of publication and found the application to be in order. The Board has jurisdiction to proceed with this application.

Attorney Lowcher requested Attorney Ours to administer the Oath to his client, Mr. Henry Riewerts.

Attorney Ours administered the Oath to Mr. Riewerts for his testimony.

Mr. Riewerts explained that he purchased the property in January, 2005 from Mr. & Mrs. Nicholas Fiore who owned the property since 1957. In the 1930’s it was a single family home and sometime during 1973-74 it was converted to a two family by Mr. & Mrs. Fiore. It was represented to him during the closing procedures, in writing, that it was a legal two-family residence. Mr. Riewerts explained that he obtained all the necessary permits to substantially renovate this property and expended a substantial sum of money to improve this two family dwelling.

Exhibits were entered into the record. Exhibit A-1 makes reference that it is two family dwelling and was a grandfathered-pre-existing non-conforming use. The property sits on 4/10 of an acre with a graveled driveway and parking for four cars.

Exhibit A-2 was submitted for the record from the Tax Assessor’s records listing the house as a two family. The records go back to 1991.

Exhibit A-3 filed was a copy of the survey.

Exhibit A-4 was a letter from Mr. Fiore attesting that it was a two family home since 1973-74.

Chairman Eller entertained comments or questions from the audience on this application. There were no remarks from the audience.

Mr. Riewert described the character of the neighborhood and several properties in the neighborhood are mixed uses. All the utilities to this property demonstrate that it is a two-family house.

Mr. Lowcher explained that Mr. Riewerts was an innocent purchaser and it was represented to him that it was a legal two family house. He needs a resolution from the Board indicating that it is a pre-existing two family dwelling. Mr. Lowcher gave a summation of this case and indicated that Mr. Riewerts purchased this property in good faith as a two family, pre-existing use and has expended a considerable sum of money to upgrade this property. There would be no substantial detriment to the public good and it would not impair the intent and purpose of the zone plan.

The Board asked several questions of the applicant. Board member Post was aware of this property and did not agree that it was a pre-existing, non conforming two family house.

Attorney Ours reviewed the testimony and noted that the Board cannot deem it a pre-existing non-conforming use because the conversion took place after the zoning regulations were adopted this zone is a single family use. It was determined that it would have to be a use variance. Mr. Ours noted that special reasons do exist and this would create an extreme hardship situation on Mr. Riewerts by virtue that he was a victim of fraud on the part of the seller. It also is in fact a mixed zone and an isolated lot.

It was therefore moved by Nienstedt, seconded by Cioni that the Board grant a use variance due to the fact that Mr. Riewerts will suffer an undue hardship as a result of being a victim of fraud, this proposed use will fit in with the surrounding properties and it will not substantially impair the intent and purpose of the zone plan and will not be detrimental to the public good.

Roll Call: Mangiacotti, Cioni, Eller, Hurley and Nienstedt – Ayes: 5,
Nays: Post and Semonche.

Motion carried.

Case #2005:19 – Muhsin Muheisen and Case #2005:20 Sean Duffy, 64 W. Warren St.

Due to the lateness of the hour the Board made an announcement to the audience that if anyone was present for these two cases they would be carried until the November meeting. No additional notice is required of the applicants.

2006 Board of Adjustment Budget

This will be carried until the November meeting. Mandatory training for Board members may also become a reality and monies will have to be appropriated in the budget for next year.

The Clerk reminded the Board members that their next meeting will be **Monday, November 21st at 8 PM.**

Hearing no further business to come before the Board, it was moved by Post, seconded by Semonche that the meeting be adjourned at 11:10 PM.

Ayes: 7, Nays: 0.
Motion carried.

Respectfully submitted,

Frank Mangiacotti, Secretary